

1 Lauri Mazzuchetti, Esq. (*pro hac vice application to follow*)  
LMazzuchetti@kelleydrye.com

2 Michael Innes, Esq. (*pro hac vice application to follow*)  
MInnes@kelleyDrye.com

3 KELLEY DRYE & WARREN LLP

200 Kimball Drive

4 Parsippany, New Jersey 07054

Phone: (973) 503-5900

5 Fax: (973) 503-5950

6 Todd L. Bice, Esq., Bar No. 4534

tlb@pisanellibice.com

7 Jordan T. Smith, Esq., Bar No. 12097

jts@pisanellibice.com

8 PISANELLI BICE PLLC

400 South 7th Street, Suite 300

9 Las Vegas, NV 89101

Telephone: 702.214.2100

10 Facsimile: 702.214.2101

11 *Attorneys for Defendant*

12 *Kohl's Department Stores, Inc.*

13 **UNITED STATES DISTRICT COURT**  
14 **DISTRICT OF NEVADA**

15  
16 Kirby Spencer,

17 Plaintiff,

18 v.

19 Kohl's Department Stores, Inc.

20 Defendant.  
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**Case No. 2:14-cv-01646-RFB-CWH**

**REQUEST FOR JUDICIAL NOTICE IN  
SUPPORT OF KOHL'S DEPARTMENT  
STORE, INC.'S MOTION TO STAY  
ACTION**

Pursuant to Federal Rule of Evidence 201, Defendant Kohl's Department Stores, Inc. ("Kohl's") respectfully requests that this Court take judicial notice of the following documents in support of its Motion to Stay Action. Judicial notice is appropriate under Federal Rule of Evidence 201(b) because the documents are of "matters of public record." *Thompson v. United States*, No. 2:12-CV-01659-RFB, 2014 WL 6473547, at \*3 (D. Nev. Nov. 17, 2014) (internal citations and quotations omitted); *see also Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001) (noting that courts may take judicial notice of "matters of public record" so long as they are not "subject to reasonable dispute.")

Judicial notice of Exhibits A through H is proper because they are Federal Communications Commission ("FCC") public notices, third-party petitions, documents filed in pending cases, and other documents either publicly submitted or released by the FCC on its Telephone Consumer Protection Act ("TCPA") regulation and decision-making authority. "[C]ourts regularly take judicial notice of documents . . . that are administered by or publicly filed with [an] administrative agency." *Tovar v. Midland Credit Mgmt.*, No. 10-cv-2600, 2011 WL 1431988 at \*2 (S.D. Cal. Apr. 13, 2011); *N.W. Envtl. Advocates v. EPA*, 537 F.3d 1006, 1026-27 (9th Cir. 2008) (taking judicial notice of contents of EPA's request for public comment); *Moore v. Verizon Communications, Inc.*, No. C 09-1823, 2010 WL 3619877 at \*3 (N.D. Cal. Sept. 10, 2010) (taking judicial notice of published FCC decisions, orders, and policy statements); *Green v. T-Mobile USA, Inc.*, No. C07-1563, 2008 WL 351017 at \*2 (W.D. Wash. Feb. 7, 2008) (taking judicial notice of comments and petitions filed with the FCC).

- **Exhibit A** is a true and correct copy of the FCC's Request for Comments, dated February 6, 2014, on a Petition for Expedited Declaratory Ruling filed by United Healthcare Services, Inc., (available at [https://apps.fcc.gov/edocs\\_public/attachmatch/DA-14-149A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DA-14-149A1.pdf))

- 1       •     **Exhibit B** is a true and correct copy of the United Healthcare Services,  
2       Inc. petition itself (the “United Healthcare Petition”) which was filed  
3       on       January       16,       2014       (available       at  
4       <http://apps.fcc.gov/ecfs/document/view?id=7521066369>).
- 5       •     **Exhibit C** is a true and correct copy of Comments in Support of United  
6       Healthcare Services, Inc.’s Petition for Expedited Declaratory Ruling,  
7       submitted to the FCC on March 10, 2014 (available at  
8       <http://apps.fcc.gov/ecfs/document/view?id=7521090161>) .
- 9       •     **Exhibit D** is a true and correct copy of the FCC’s Request for  
10      Comments, released February 21, 2014, (available at  
11      [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2014/db0221/](http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0221/DOC-325716A1.pdf)  
12      [DOC-325716A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0221/DOC-325716A1.pdf)) on a Petition for Rulemaking submitted to the  
13      FCC by ACA International.
- 14      •     **Exhibit E** is a true and correct copy of the ACA International petition  
15      itself (the “ACA Petition”), which was filed on February 11, 2014  
16      (available       at  
17      [http://www.acainternational.org/files.aspx?p=/images/31136/acainterna](http://www.acainternational.org/files.aspx?p=/images/31136/acainternationalpetitionforrulemaking.pdf)  
18      [tionalpetitionforrulemaking.pdf](http://www.acainternational.org/files.aspx?p=/images/31136/acainternationalpetitionforrulemaking.pdf)).
- 19      •     **Exhibit F** is a true and correct copy of the August 1, 2014 letter  
20      submitted to the FCC Chairman Tom Wheeler by various members of  
21      Congress       (available       at  
22      [http://www.ballardspahr.com/~media/files/alerts/2014-08-07-](http://www.ballardspahr.com/~media/files/alerts/2014-08-07-letter1.pdf)  
23      [letter1.pdf](http://www.ballardspahr.com/~media/files/alerts/2014-08-07-letter1.pdf))
- 24      •     **Exhibit G** is a true and correct copy of a Class Action Status Report  
25      filed by the FCC on September 26, 2014 at docket entry No. 58 in  
26      *Heinrichs v. Wells Fargo Bank, N.A.* pending before the United States  
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District Court for the Northern District of California at case no. CV 13-05434 WHA.

- **Exhibit H** is a true and correct copy of FCC Chairman Tom Wheeler's October 10, 2014 letters in response to various members of Congress regarding the status of the ACA Petition (available at [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2014/db1030/DOC-330243A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db1030/DOC-330243A1.pdf)).

Further, good cause exists to take judicial notice of these materials as they bear directly on the existence and nature of the current FCC proceedings on the TCPA, which are directly relevant to Kohl's argument that this case must be stayed on grounds of primary jurisdiction.

Dated: December 24, 2014

PISANELLI BICE PLLC

By: /s/ Jordan T. Smith  
Todd L. Bice, Esq., Bar No. 4534  
Jordan T. Smith, Esq., Bar No. 12097  
400 South 7th Street, Suite 300  
Las Vegas, NV 89101

Lauri Mazzuchetti, Esq. (*pro hac vice application to follow*)  
Michael Innes, Esq. (*pro hac vice application to follow*)  
KELLEY DRYE & WARREN LLP  
200 Kimball Drive  
Parsippany, New Jersey 07054  
Phone: (973) 503-5900  
Fax: (973) 503-5950

*Attorneys for Defendant*

*Kohl's Department Stores, Inc*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Pisanelli Bice, PLLC, and that on this 24<sup>th</sup> day of December, 2014, I caused to be served the foregoing **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF KOHL'S DEPARTMENT STORE, INC.'S MOTION TO STAY ACTION** via electronic mail through the United States District Court's CM/ECF system.

/s/ Shannon Thomas  
An employee of Pisanelli Bice, PLLC